

# The Corporation of the Town of Tecumseh

## By-Law Number 2022-092

Being a by-law to authorize the execution of an Agreement between The Corporation of the Town of Tecumseh and Essex County K9 Services for animal control services for the period January 1, 2023 to December 31, 2025.

**Whereas** Essex County K9 Services was awarded the tender for Animal Control Services for Dog Control in the Town of Tecumseh;

**And whereas** the Town is desirous of entering into an Agreement for the provision of animal control services for the period January 1, 2023 to December 31, 2025.

**And Whereas** Essex County K9 Services (Dog Controller) has agreed to provide animal control services to the Town on the terms and conditions set forth in the attached agreement.

**And Whereas** pursuant to the *Municipal Act 2001*, S.O. c.25 the powers of the municipality shall be exercised by by-law.

**Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:**

1. **That** the Mayor and Clerk are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh to execute the Agreement, dated the 1st day of January, 2023, between The Corporation of the Town of Tecumseh and Essex County K9 Services, a copy of which Agreement is attached hereto and forms part of this by-law, and to do such further and other acts which may be necessary to implement the said agreement.
2. **That** this by-law shall come into full force and take effect on the 1st day of January, 2023.

**Read** a first, second, third time and finally passed this 13th day of December, 2022.

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Gary McNamara, Mayor

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Jennifer Alexander, Acting Clerk

**THIS AGREEMENT** made as of the 1st day of January, 2023.

Between

The Corporation of The Town of Tecumseh  
(hereinafter called the 'Town")

Of The First Part

-and -

Essex County K9 Services  
(hereinafter called the "Dog Controller")

Of The Second Part

**Whereas** the Town is desirous of entering into an Agreement for the provision of dog control services;

**And Whereas** the Dog Controller has agreed to provide dog control services to the Town on the terms and conditions hereinafter set forth;

**Now This Agreement Witnesseth** that in consideration of two dollars (\$2.00), the covenants and agreement hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, the Parties hereto hereby undertake and agree as follows:

### **Term & Recitals**

1. This Agreement shall be in effect for a period of three (3) years, commencing on the 1st day of January 2023, through to and including the 31st day of December, 2025 , or any extension thereof (the "Term"). Notwithstanding the afformentioned, the Town may terminate this Agreement at any time upon providing sixty (60) days' written notice to the Dog Controller.
2. Each party represents and warrants to the other Party that the recitals to this agreement insofar as they relate to the party, are true and correct.

### **Dog Controller Services**

3. The Dog Controller undertakes and agrees to:

- a) Accept responsibility for, and to perform such duties and exercise such powers under certain provisions of By-law No. 2003-91, as may be amended or replaced from time to time, respecting the regulation of dogs within the geographic municipal limits of the Town, and to perform such other duties as may from time to time be assigned or vested in the Dog Controller by the Town respecting dog control;
- b) Provide suitable and safe truck and/or van vehicles, which: (i) have passed motor vehicle safety and structural inspections to certify that the vehicles meet minimum safety requirements; ; (ii) are in good condition and repair; and (iii) are clearly marked with the Dog Controller's business name or otherwise with words which ensure members of the public can readily identify the vehicle as being used for the provision of dog control services for the Town ;
- c) Provide proper and humane equipment and tools for the capturing and holding of captured dogs, pending their delivery to the Lakeshore Dog Pound Facility;
- d) Make reasonable efforts to reunite Stray Dogs (as defined below) with their owners;
- e) Be responsible for providing all gasoline, oil, repair and maintenance required for the vehicle(s) referred to in paragraph 3.b) at the Dog Controller's sole and exclusive expense;
- f) Provide copies of the vehicle registration and insurance coverage to the Town for the vehicles referred to in paragraph 3. b) upon execution of this agreement and otherwise within forty eight (48) hours following the Town's request for same.;
- g) To provide direct telephone and answering services by which the Dog Controller can be accessed 24 hours daily, seven (7) days a week;
- h) Employ a high standard of public relations and communication when communicating with the Town and members of the public;
- i) Respond directly and provide service to the Town on an on-call basis throughout the Term of the Agreement. Incoming calls from the Town and members of the public shall be responded to within a 30- minute period;
- j) Respond to Emergency Calls on a 24-hour basis. An "Emergency Call" shall be defined as follows:
  - i) Calls relating to any Stray Dogs (as defined below) who are reported as being sick or injured; or

- ii) Calls relating to all stray dogs that have been contained by a citizen or citizens as a result of the said dog or dogs being found wandering without an owner ("Stray Dog" or "Stray Dogs"), or
- iii) Calls reporting any Stray Dog as being a danger to the public;
- k) Be responsible for delivering Stray Dogs to the Lakeshore Dog Pound Facility when they are found or reported as wandering without an owner in the municipal boundaries of the Town of Tecumseh. For purposes of this agreement delivering dogs to the Lakeshore Dog Pound Facility shall require the Dog Controller to impound the animal at the said facility;
- l) Deliver all injured and/or sick dogs to a local veterinary clinic approved by the Town in writing for purposes of receiving care. When the animal is released from the care of said veterinary clinic it shall be delivered to the Lakeshore Dog Pound Facility by the Dog Controller;
- m) Deliver all Stray Dogs captured by the Dog Controller who are not deemed sick or injured by the Dog Controller (who shall act reasonably in making such a determination) directly to the Lakeshore Dog Pound Facility;
- n) Prepare and furnish statistical and monthly written reports respecting occurrences and other information as may be required by the Town;
- o) Issue warnings and tickets to persons contravening the provisions of the Town's By-laws which regulate dogs;
- p) Inspect properties for the issuance of Kennel Licenses in accordance with the Town's By-laws concerning the same or otherwise as directed by the Town;
- q) Monitor and patrol Town Parks for the purposes of maintaining the provisions of the Town's By-laws which regulate dogs (including, but not limited to, Stray Dogs);
- r) Provide a current and accurate list of all staff employed by the Dog Controller who shall deliver the services contemplated hereunder (including, but not limited to, those who shall provide the services for temporary periods during vacation time, holidays, weekends or otherwise) to the Town on a regular basis and otherwise upon request of the Town;
- s) Provide appropriately labeled clothing and shall at all times wear said clothing identifying him/her as a "Dog Control Officer". Said clothing shall be clean and presentable;

### **Dog Controller Insurance**

4. The Dog Controller shall provide to the Town evidence of:
  - a) Commercial General Liability insurance including the Town as an Additional Insured, with limits of not less than Two Million (\$2,000,000) Dollars, per occurrence applying to all operations of the Dog Controller and which shall include bodily injury liability, personal injury liability, contractual liability, death and damage to property, including loss of use. Such policy shall be written on a comprehensive basis. The form of this insurance shall in all respects be satisfactory to the Town as evidenced by the Town in writing and shall be maintained continuously from the commencement of this Agreement.
  - b) Automobile Liability Insurance in respect of licensed vehicles shall have limits of not less than Two Million (\$2,000,000) Dollars, per occurrence for bodily injury, death and damage to property and Standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Dog Controller.
  - c) The above policies shall be endorsed to provide the Town with not less than 30- days written notice in advance of any cancellation, change or amendment restricting coverage.

### **Indemnification Of Town**

5. The Dog Controller shall provide evidence of compliance with all requirements of the *Workplace Safety and Insurance Act* and the Workplace Safety and Insurance Board. Such evidence to include a certificate of good standing issued prior to the execution of this Agreement and a further certificate issued prior to the payment of the final balance due to the Dog Controller.
6. The Dog Controller shall indemnify and hold harmless the Town, it's officers, council members, partners, agents and employees from and against all action, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Town and against all loss, liability judgments, claims, suits, demands of expenses which the Town may sustain, suffer or be put to resulting from or arising directly or indirectly out of the actions of the Dog Controller or its , agents, officials, directors, officers, employees , assigns and anyone for whom it is at law responsible, including, but not limited to, its failure to exercise reasonable care, skill or diligence or its omissions in the performance or rendering of any work or service contemplated hereunder to be performed

or rendered by the Dog Controller, its agents, officials, directors, officers, employees, assigns and anyone for whom it is at law responsible, anything in this agreement to the contrary notwithstanding.

7. The Dog Controller shall be, or shall become, familiar with and abide by or otherwise comply with all such laws, regulations and policies which in any manner affect the performance of the Contract, those engaged or employed in the work, or affect facilities or equipment used in the work, or which in any way may affect the conduct of the work and no plea of misunderstanding will be considered on account of ignorance thereof. Without limiting the generality of the aforesaid, it shall be the Dog Controller's responsibility to comply with:
  - a) Environmental Protection Act and Regulations;
  - b) Workplace Safety and Insurance Act;
  - c) Occupational Health and Safety Act;
  - d) Ontario Human Rights Act'
  - e) Safety or other Policies established by the Town;
  - f) Construction Lien Act and regulations; and
  - g) Ministry of Transportation Regulations including the Commercial Vehicle Operating Regulations.
8. The Dog Controller shall indemnify and hold harmless the Town and its employees against and from all suits or actions arising from any Health and Safety violations as well as the cost to defend such charges as a result of any violation.
9. The Dog Controller shall comply with all applicable municipal, provincial and federal laws, regulations and guidelines pertaining to the Dog Controller's services provided herein to the Town including, but not limited to, all labour, police, health, environmental, public health and sanitation laws, ordinances and regulations imposed by public bodies having jurisdiction over such matters.
10. Safety and First Aid: The Dog Controller shall provide and maintain the necessary items and equipment as called for under the First Aid Regulations of the *Workplace Safety and Insurance Act* and the *Occupational Health and Safety Act*.
11. In the event of a site visit from the Ministry of Labour and in the event any person or persons from the Ministry of Labour gives written warning regarding any contravention to the *Health and Safety Act* to the Dog Controller (or to its agents, officials, directors, officers, employees, assigns and anyone for whom it

is at law responsible), the Dog Controller shall provide a written copy of such written warning to the Town within 24 hours of receipt of same.

12. The Dog Controller shall ensure that all its employees, agents, volunteers, or others for whom the Dog Controller is legally responsible receive training regarding the provisions of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the *Accessibility for Ontarians with Disabilities Act, 2005* as amended (the "Act"). The Dog Controller shall ensure that such training includes, without limitation, a review of the purpose of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. The Dog Controller shall submit to the Town, as required from time to time, documentation describing its customer service training policies, practices and procedures and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers or others who received such training. The Town reserves the right to require the Dog Controller to amend its training policies to meet the requirements of the Act and the Regulation.
13. All such indemnifications hereunder (including, but not limited to, paragraphs 5 to 12 both inclusive) in respect of any breach, violation or non-performance, damage to property, injury or death occurring during the Term of the agreement shall survive any termination of this agreement, anything in this agreement to the contrary notwithstanding.

### **Fees**

14. The Town hereby undertakes and agrees, in return for the satisfactory performance of the matters referred to above, to compensate the Dog Controller at the monthly rate of \$991.67 plus HST, payable at the end of the duties for the then current month. If the Dog Controller's services shall commence upon a day other than the first of the month or end on a day other than the last of the month then the Town shall pay a portion of the fixed monthly rate described herein prorated on a per diem basis with respect to a period of 30.4 days.

### **Assignment**

15. The Dog Controller shall not assign or transfer this Agreement without the prior written consent of the Town, which consent may be unreasonably withheld.

**Extension of Term**

- 16. Provided the Dog Controller shall not be in default of performance of any of the provisions hereunder, the Parties may by mutual agreement in writing extend the Term of this agreement for an additional two (2) years provided the parties have done so at least six (6) months before the expiration of the then current Term. The terms and conditions of such extension shall be the same as those contained in this agreement.

**Notice Provisions**

- 17. Any notice, request or demand given under this Agreement shall be sufficiently given if delivered personally or mailed by prepaid registered mail to the Parties at their designated addresses hereinafter set out or to such other respective addresses designated by a party on written notice given to the other party in accordance hereunder:

Town	Director Legislative Services & Clerk The Corporation of the Town of Tecumseh 917 Lesperance Road Tecumseh, Ontario NBN 1W9
Dog Controller	Essex County K9 Services 78 Division Road North, RR3 Cottam, ON N0R 1B0

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. "Business Day" means Monday through Friday from 9am to 5pm local time in Tecumseh, Ontario, and excludes weekends and public holidays.

**Time of the Essence**

- 18. Time is of the essence in this agreement.

**Applicable Law**

- 19. This agreement shall be governed in all regards by the laws of the Province of Ontario and parties hereto shall attorn to the courts in the City of Windsor.

### **Enurement**

20. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties and their respective administrators and their organizational successors and assigns.

### **Waiver**

21. No waiver by any party of a breach of any of the covenants, conditions, terms and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to future breaches.

### **Severability**

22. If any covenant, terms or provisions contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant, term or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant, term or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant, term or provision, and such invalid or unenforceable covenant, term or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

### **Entire Agreement**

23. This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

### **Execution in Counterpart**

24. This Agreement may be executed in counterparts by Telefax, e-mail, electronically scanned copy **or** similar system reproducing the original with necessary signatures and initials, each of which so executed shall be deemed to be an original, such counterparts together shall constitute on and the same instrument and shall be binding on all parties hereto.

**IN WITNESS WHEREOF** the parties hereto have hereunder set their hands and seals by the hands of their proper signing Officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Signed, Sealed and Delivered**  
In the presence of

**The Corporation of The Town of Tecumseh**

By:

\_\_\_\_\_  
Name: Gary McNamara  
Title: Mayor

\_\_\_\_\_  
Name: Jennifer Alexander  
Title: Acting Clerk

**Dog Controller**  
By

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Name: Essex County K9 Services